No. 10-40

In The
Supreme Court of the United States

RONALD JULIAN HANSON & KATHY ANN HANSON,

Petitioners,

vs.

THE STATE OF HAWAII,
THE HONORABLE GARY WB CHANG, THE
COURT ADMINISTRATOR GLENNARD FONG,
AND PALEHUA COMMUNITY ASSOCIATION,

Respondents.

On Petition For A Writ Of Certiorari
To The Supreme Court
Of The State Of Hawaii

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

COMES NOW Respondent PALEHUA COMMUNITY ASSOCIATION ("PCA"), by and through its attorneys, O'Connor Playdon & Guben LLP, and hereby submits this brief in opposition to Petitioners Ronald Julian Hanson and Kathy Ann Hanson's (collectively "Petitioners") Petition for a Writ of Certiorari, filed herein on June 28, 2010 ("Petition").

CONCISE STATEMENT OF THE CASE

The underlying case is an action brought by PCA to enforce certain restrictive covenants against Petitioners relating to the erection of a boundary fence in their backyard. Petitioners, who are proceeding *pro se* below and before this Court, are generally displeased with various interlocutory trial court rulings issued by Respondent Gary W.B. Chang ("Judge Chang"), Judge of the First Circuit of the State of Hawaii. Rather than appealing in the normal course from a final judgment entered by Judge Chang, Petitioners hastily sought relief from the Hawaii Supreme Court through an unsuccessful petition for writ of mandamus. Petitioners now seek assistance from this Court, but lack a jurisdictional basis to do so.

SUMMARY OF ARGUMENT

Several procedural steps must occur before this Supreme Court can review the decisions of a State trial court. The trial court must first enter a final judgment. Then, an appeal from the final judgment must be considered by the highest court of the State.

Petitioners have flatly ignored these procedural prerequisites and are improperly seeking to bypass the Hawaii appellate courts. No final judgment has been entered, and the Hawaii Supreme Court has not yet reviewed the merits of Petitioners' criticisms of Judge Chang. The Hawaii Supreme Court has only ruled that Petitioners are not entitled to immediate relief in the form of a writ of mandamus. On the record presented, Petitioners' plea to the Supreme Court is, at best, premature.

ARGUMENT

SINCE NO FINAL JUDGMENT HAS BEEN ENTERED BELOW, THE SUPREME COURT LACKS JURISDICTION TO CONSIDER THE PETITION

The authority of the Supreme Court to review the decisions of State courts derives from 28 U.S.C. §1257. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 477, 43 L. Ed. 2d 328, 95 S. Ct. 1029 (1975). Section 1257 provides, in relevant part, as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari. . . .

28 U.S.C. §1257(a). To be considered "final", a judgment

> must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court.

Jefferson v. City of Tarrant, 522 U.S. 75, 81, 139 L. Ed. 2d 433, 118 S. Ct. 481 (1997) (quoting *Market Street R. Co. v. Railroad Comm'n of Cal.*, 324 U.S. 548, 551, 89 L. Ed. 1171, 65 S. Ct. 770 (1945)). In other words, a petitioner must have first exhausted State court remedies before coming to the Supreme Court. *See Minnick v. California Dep't of Corrections*, 452 U.S. 105, 120, 68 L. Ed. 2d 706, 101 S. Ct. 2211 (1981) ("The judgment is clearly not final in the sense that no further proceedings can possibly take place in the state judicial system.").

The requirement of finality "is an important factor in the smooth working of our federal system." *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124, 89 L. Ed. 2092, 65 S. Ct. 1475 (1945). Namely, it avoids piecemeal review and advisory opinions, and minimizes Federal intrusion into the State courts. *See North Dakota State Bd. of Pharmacy v. Snyder's*

Drug Stores, Inc., 414 U.S. 156, 159, 38 L. Ed. 2d 514, 94 S. Ct. 407 (1973).

Petitioners are not seeking review of a final judgment here. Instead, they challenge various pre-trial rulings of Judge Chang; rulings that have not been incorporated into a judgment. The alleged errors include "file tampering", improperly ordering mediation, and failing to impose sanctions on opposing counsel. *See* Petition at 27-28. These are merely "intermediate steps" in the trial process that are not yet ripe for appeal. *See Jefferson*, 522 U.S. at 81.

Further, the Hawaii Supreme Court has not reached the merits of Petitioners' arguments. It has not determined whether Petitioners are right or wrong. Rather, it concluded that an ordinary appeal, as opposed to the extraordinary remedy of mandamus, is the proper avenue for redress.[1] *See* Petition, App'x A at 2 (citing *Kema v. Gaddis*, 91 Haw. 200, 204, 982 P.2d 334, 338 (Haw. 1999)). Since Petitioners' State court appellate rights remain intact, the challenged rulings are subject to "further review or correction" and are therefore not final. 522 U.S. at 81. Petitioners certainly have not received "the final word of a final court." *Id.*

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[1] Petitioners also reference filing a petition for writ of prohibition, but indicate that the Hawaii Supreme Court has not even ruled on said petition. *See* Petition at 20. Therefore, by Petitioners' own admission, the Supreme Court lacks jurisdiction in this regard. *See* 28 U.S.C. §1257.

The prematurity of the Petition is highlighted by the substantive argument advanced by Petitioners. The only Federal issue they raise is one of due process. Petitioners essentially *anticipate* being deprived of a fair trial in violation of their right to due process. *See* Petition at 32.

Yet, at this point, it is pure speculation for Petitioners to assume that they will not receive a fair trial. Since Petitioners' supposed Federal claims relate to a trial that has not taken place, the Petition is unripe. *See generally O'Dell v. Espinoza*, 456 U.S. 430, 72 L. Ed. 2d 237, 102 S. Ct. 1865 (1982) ("Because the Colorado Supreme Court remanded the case for trial, its decision is not final 'as an effective determination of the litigation.'").

None of the exceptions to the final judgment requirement are applicable. The Supreme Court has exercised jurisdiction over cases "in which the highest court of a State has finally determined the federal issue present in a particular case, but in which there are further proceedings in the lower state courts to come." *Cox Broadcasting*, 420 U.S. at 477. In the case at bar, however, since trial has yet to commence, the Hawaii Supreme Court has not had an opportunity to determine whether Petitioners were afforded a fair trial.

Finally, PCA disputes the factual allegations made by the Petitioners in the Petition. Those issues are not addressed herein because the Petition is not ripe for consideration.

CONCLUSION

For the foregoing reasons, Respondent PALEHUA COMMUNITY ASSOCIATION respectfully requests that the Petition be denied.

Respectfully submitted,

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